IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

D.B. CRIMINAL JAIL APPEAL NO. 251/2003
(Kalyan & Anr. Vs. The State of Rajasthan)

D.B. CRIMINAL JAIL APPEAL UNDER SECTION 383 Cr.P.C. AGAINST THE JUDGMENT DATED 13.07.2001 PASSED BY THE LEARNED ADDITIONAL SESSIONS JUDGE (FAST TRACK) CHITTORGARH IN SESSIONS CASE NO. 82/01 – STATE OF RAJASTHAN VS KALYAN & ANOTHER.

DATE OF JUDGMENT : 05th SEPTEMBER, 2006

P R E S E N T

HON'BLE MR. JUSTICE N.N.MATHUR
HON'BLE MR. JUSTICE R.P.VYAS

Mr. Kalu Ram Bhati, Amicus Curiae for the appellants.
Mr. O.P.Rathi, Public Prosecutor.

BY THE COURT : (PER HON'BLE MR. MATHUR,J.)

1. The appellants – Kalyan and Mahaveer on the charge of murder of one Mohan stood for trial before the court of learned Additional Sessions Judge (Fast Track), Chittorgarh. The learned Judge by judgment dated 13.07.2001 having found the charges proved, convicted the appellants of offence under Section 302/34 IPC and sentenced each of them to imprisonment for life and to pay a fine of Rs.2,000/-, in default of payment of fine to

further undergo two months' simple imprisonment. The appellants have also been convicted of offence under Section 201/34 IPC and sentenced to seven years' simple imprisonment and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo one month's simple imprisonment.

2. Briefly stated the prosecution case is that a dead-body in mutilated condition was found in the field of PW-6 Mst. Chatri on 25.09.98. An information in that regard was given to the police on the same day at 12:30 p.m. by PW-11 Mangi Lal. An enquiry was commenced under Section 174 Cr.P.C. The police inspected the site. The clothes smeared in the soil were found near the dead-body. The police seized the same. During investigation, the appellants were arrested. After usual investigation, police laid charge sheet against the appellants for offence under Sections 302, 302/34 & 201/34 IPC. During the trial, the prosecution relied upon the following pieces of circumstances:

(1) Last Scene.

(2) Extra Judicial Confession.

(3) Recovery of the incriminating articles.

(4) Recovery of the clothes.

3. The trial court having found the prosecution case proved,

convicted and sentenced the appellants in the manner indicated above.

4. As far as the circumstance of extra judicial confession is concerned, the learned trial court did not found the same proved as none of the prosecution witnesses has supported the prosecution in that regard. As far as recovery of the clothes is concerned, the same does not in any way connect the appellants with the alleged crime. The police found the clothes lying near the dead-body. The clothes were seized. An identification was arranged in the presence of PW-21 Shyam Lal, Tehsildar. The clothes were identified by PW-3 Chunni Lal. This piece of circumstance in no way connect the appellants with the alleged crime. At the most, on the basis of the clothes, it can be said that the dead-body was that of Mohan, who was in the employment of PW-3 Chunni Lal. Thus, there remains the only evidence of last scene and the recovery of stick.

5. Before we proceed to deal with the said two pieces of circumstances, we may refer to the medical evidence. PW-20 Dr. Nizam Hashmi deposed that he conducted the post-mortem of the dead body found on the outskirt of village Jagpura. He has proved the Post-Mortem Report Ex.P-17. The Post-Mortem Report Ex.P-17 shows that the skull was found in decomposed

and mutilated condition. Rest of the body was skeleton. The doctor could not found the cause of death. However, he preserved the samples and sent them for chemical examination. On the basis of the FSL Report Ex.P-55, he suspected it to be a case of poisoning.

6. As far as the evidence of recovery of stick is concerned, it is stated by PW-25 Ajiz Mohd., the In-charge of the Police Station that appellants Kalyan and Mahaveer were arrested vide Ex.P-49 & Ex.P-48 respectively. In pursuance of the information given by appellant Kalyan vide Ex.P-50, a stick was recovered vide Ex.P-14. Admittedly, no blood was found on the stick. Thus, this piece of circumstance also does not connect the appellants with the alleged crime. As far as the evidence of last scene is concerned, PW-1 Udai Lal stated that while he was on way to his village, deceased Mohan was also with him. On the way, appellants Kalyan and Mahaveer met and they took him with them. They proceeded towards Bhaisrodgarh. After 5 - 6 days, he found Chunni Lal taking the cattle. On enquiry, he disclosed that Mohan had not visited the filed for last 5 – 7 days. He told him that 5 – 7 days back, he had seen Mohan going with Mahaveer and Kalyan. Similarly, PW-3 Chunni Lal stated that deceased Mohan had left the filed to visit his sister. He had collected hundred rupees from him. He had not seen him

thereafter. This piece of circumstance is not of clinching nature. Even otherwise, on the basis of such flimsy evidence, it can not be positively held that they were the appellants, who committed the murder of deceased Mohan.

7. In view of the aforesaid, we are of the view that the learned Additional Sessions Judge (Fast Track), Chittorgarh has committed manifest error in convicting the appellants - Kalyan son of Devi Lal and Mahaveer son of Nanu Ram of offence under Sections 302/34 & 201/34 IPC.

8. Consequently, the appeal is allowed. The judgment dated 13.07.2001 passed by the learned Sessions Judge (Fast Track), Chittorgarh is set aside. The appellants – Kalyan son of Devi Lal and Mahaveer son of Nanu Ram are acquitted of the charges under Sections 302/34 and 201/34 IPC. They are in jail. They shall be set at liberty forthwith, if not required in any other case.

(R.P.VYAS),J. **(N.N.MATHUR),J.**

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